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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:

MB DOCKET NO. 04-191

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

San Francisco Unified
School District
For Renewal of License
for Station KALW(FM),
Facility ID No. 58830
San Francisco, California

MB Docket No. 04-191

File No.
BRED-19970801YA

Thursday
May 26, 2005

The above entitled matter came on for
hearing pursuant to notice at 9:30 a.m.

BEFORE

Richard L. Sippel, Chief Administrative Law Judge

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School District:

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Start Time: 9:28 a.m.

End Time: 12:41 p.m.

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P-R-O-C-E-E-D-I-N-G-S

9:28 A.M.

ADMIN. JUDGE SIPPEL: This is the scheduled admission session pursuant to the order released on April 5. It's FCC05M-21. This is actually the beginning of the hearing, so I'm going to ask counsel to please identify themselves for the record.

I'm going to start with the Renewal Applicant San Francisco Unified School District's, please.

MS. REPP: For SFUSD, Marissa Repp and Martin Price of Hogan and Hartson, LLP.

ADMIN. JUDGE SIPPEL: And I take it that this will be trial counsels throughout the hearing?

MS. REPP: We will, but we will probably also have, in addition, Robert Duncan of our firm.

ADMIN. JUDGE SIPPEL: Okay. You're all welcome. The more the merrier. On behalf of the Bureau?

MR. SHOOK: James Shook and Dana Leavitt.

ADMIN. JUDGE SIPPEL: Okay. Now, we all know what the primary purpose that we're here today for. Let me just say a little bit about the procedure that I'd like to follow. Counsel will identify - I'm

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1 going to start, of course - I was going to call the
2 school district for short reference.

3 The School District will start. The
4 school district has the burden on the issues that were
5 set in the pre-hearing - I'm sorry, in the designation
6 order. On the order that I set on this
7 representation, I've assigned the burden to the
8 Bureau.

9 But, for purposes of facilitating this
10 this morning across the board, I'm going to ask the
11 School District to take the initiative to first
12 proffer their evidence. And the procedure is
13 basically as follows: that you will identify what the
14 document is that you want to be received as whatever
15 you want to call it - FSUSD Exhibit No. 1, or however.

16 It is a document consisting of X number of
17 pages. And you're moving, at this time, that it be
18 received in evidence. And the other side will have
19 the opportunity to object.

20 If there's going to be any objection, or
21 if I have a question about relevance, it will come up
22 at that time. But I'm not going to require you to
23 make a proffer of relevance at the time that you're
24 offering the exhibits.

25 These have all been exchanged weeks in

1 advance. We've all had an opportunity to look at them
2 and review them. And unless you have something
3 preliminary to let me know that there are particular
4 problems with any of this evidence, I'm expecting that
5 this will move along fairly smoothly - quite smoothly,
6 in fact.

7 And it will be the same procedure for both
8 sides. But do make the formal motion that it be
9 received into evidence, and be sure that the document
10 is identified. Give the reporter a chance to get it
11 marked, and indicate the number of pages.

12 All right. Before we start, I have some
13 preliminary things that I would just like to cover
14 very quickly. For example, the courtroom schedule...
15 We are beginning to try the hearing on the 6th of
16 June, which is a Monday.

17 And I want to ask counsel at this time if
18 you can give me an idea, in terms of how many days of
19 that week, if you're able to estimate, that it will
20 take to complete the hearing?

21 MS. REPP: We have talked somewhat, Your
22 Honor. I think the current estimate is it would run
23 through Thursday.

24 ADMIN. JUDGE SIPPEL: All right. Okay.

25 MR. SHOOK: Going along with that, we

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1 anticipate that each witness will take approximately
2 one day. There are some witnesses that may take a
3 little longer than a day, and others, in particular
4 Mr. Helgeson, because of his sight difficulties.

5 ADMIN. JUDGE SIPPEL: Right.

6 MR. SHOOK: But each day should basically
7 have just one witness. And I think that would make it
8 really easier for everybody, for scheduling purposes,
9 to think in those terms.

10 ADMIN. JUDGE SIPPEL: Okay, great. Now,
11 the question I have: Supposing that we -
12 hypothetically, if there's a witness that finishes at
13 2:00 P.M. in the afternoon, will there be another
14 witness that will be available to pick up for a couple
15 of hours in that afternoon so that we don't lose that
16 time slot?

17 MS. REPP: Yes, Your Honor. Certainly,
18 the District witnesses will all be here starting on
19 Monday, so that our witnesses will be available. I'm
20 not sure what we've determined about Mr. Lopez.

21 There was some discussion about him by
22 telephone. Is that not something we're looking into
23 right now?

24 MR. SHOOK: Right now, we anticipate
25 flying Mr. Lopez in. We're flying him in on

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1 Wednesday, and then present him on Thursday. So, it
2 is conceivable that Ms. Sawaya will finish up well
3 before 4:00 P.M. on Wednesday.

4 And I would request that we simply break
5 at that point, and begin with Mr. Lopez the following
6 morning.

7 ADMIN. JUDGE SIPPEL: All right. That
8 sounds very doable to me. Now, let me just, for my
9 own purposes, check what I have here. Direct
10 testimony - well, the direct testimony question has
11 been submitted by way of the written procedure.

12 And I've read this testimony, and it's
13 very clear - it's very well prepared, and I appreciate
14 this very much. I think people up the line will
15 appreciate it too, if it gets there.

16 So, I want to commend counsel on both
17 sides for that. As I see it, however, for cross-
18 examination purposes, the Bureau designated Jeffrey
19 Ramirez, William Helgeson and Ms. Sawaya. Is that
20 correct?

21 MR. SHOOK: Correct.

22 ADMIN. JUDGE SIPPEL: And then, Ms. Repp,
23 you have requested Jason Lopez for cross-examination?

24 MS. REPP: Correct, Your Honor.

25 ADMIN. JUDGE SIPPEL: So, that gives us

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1 four days and four witnesses. That's how it - I'm
2 just repeating this for my own benefit. You told me
3 this. Please bear with me. That's fine.

4 Let me ask you now about the scheduling.
5 I indicated 9:30 A.M. to start. Is there any - does
6 anybody have any concern about going from 9:30 A.M. to
7 5:00 P.M.? Does anybody have any question about not
8 being able to complete a witness within that
9 timeframe, taking an hour and 15 minutes or so for
10 lunch?

11 Because, if so, the reason I'm asking that
12 question is I'll be delighted to start at 9:00 A.M.
13 I get here very early in the morning. But I want to
14 accommodate - particularly, I want to accommodate the
15 San Francisco -

16 MS. REPP: Well, our witnesses are coming
17 in from Pacific Time, and I think 9:30 A.M. gives us
18 a little extra measure to make sure they're here on
19 time.

20 MR. SHOOK: And awake.

21 MS. REPP: And awake. So, I would prefer
22 to start at 9:30 A.M. I do think we are likely to
23 finish up with three witnesses, one per day. Again,
24 some may take a little more than one day, some a
25 little less.

1 We're not anticipating a particularly long
2 cross-examination of Mr. Lopez. So, that even if we
3 ran late on San Francisco witnesses, I believe, based
4 on what we're anticipating, we will be done in advance
5 of 5:00 on Thursday.

6 ADMIN. JUDGE SIPPEL: Well, that's what
7 I'm going to push for. I'm not going to push, but I'm
8 going to encourage that. I'm willing to go until, if
9 it needs to be done, I'm willing to go as late as 6:00
10 P.M.

11 I'm thinking in terms of what will be a
12 reasonable period of time to work with one another all
13 day, that 5:00 P.M. will probably - most people would
14 be willing to cut it off.

15 But if there is, again, it's very
16 important that the San Francisco - the out of town
17 people - be accommodated. So, I don't mind going
18 until 6:00 P.M. if it's going to mean them finishing
19 a day, and then they can get the plane the next day.

20 MS. REPP: We've arranged their travel
21 plans so that 9:30 A.M. to 5:00 P.M. would work well
22 with our witnesses.

23 ADMIN. JUDGE SIPPEL: All right. Let me
24 just tell you, then, for my own personal schedule. On
25 Tuesday, I'm going to need a little bit of extra time

1 to get some things done. I'm going to have to leave
2 the courtroom by 11:45 A.M. and I'll be back in the
3 courtroom at something like 1:45 P.M.

4 I will let that be known again on Tuesday,
5 so that you can plan ahead to take some extra time.
6 And, again, based on what you're telling me here, I
7 don't see how that's going to impact on any of the
8 business that we're going to conduct.

9 All right. As far as courtroom rules are
10 concerned, the only rule I have is please no food in
11 the courtroom. Bottled water, certainly. And during
12 the course of the hearing, when there are witnesses in
13 the room, I'd ask that the bottled water be kept under
14 wraps.

15 Just try to keep it off of the table.
16 Today, don't worry about it. It's for the benefit of
17 the public and the witnesses that I'm trying to run
18 this proceeding with as much dignity as possible,
19 because there is a heck of a lot at stake. I
20 understand that.

21 Now, section - there is a public notice
22 scheduled to be completed, I believe, yesterday. Has
23 that been done?

24 MS. REPP: The notices have been running.
25 I haven't received yet, back, the certifications from

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1 the station. But I have asked them to provide
2 certification for broadcasts, which we will file with
3 the Court.

4 ADMIN. JUDGE SIPPEL: Okay, but as far as
5 - I don't have to be concerned that that is not being
6 done?

7 MS. REPP: No.

8 ADMIN. JUDGE SIPPEL: Okay, that's fine.
9 All right now, preliminarily, does anybody have
10 anything further? I'm not going to get to setting the
11 proposed fining dates until after we close the record
12 in that week of June.

13 But I want counsel to work out amongst
14 themselves what will be convenient dates. That's the
15 way I want to leave it.

16 MS. REPP: Your Honor, may I ask a few
17 procedural questions?

18 ADMIN. JUDGE SIPPEL: Absolutely.

19 MS. REPP: In terms of the public notices
20 that are running, as set forth in the rule, they
21 invite the public to send comments to the FCC. I know
22 some have been coming in and the FCC - the Secretary's
23 office has sent us some copies.

24 My question is, is there a way that you
25 want the District put those items into the record, or

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1 will that automatically occur once they're received
2 from the Secretary's office?

3 ADMIN. JUDGE SIPPEL: I would - I'm glad
4 that you did raise that. I didn't have that on my
5 schedule. But I would like you to work together with
6 - I think the burden is going to be on the School
7 District to get those assembled at a reasonable time
8 after the hearing, and confer with Mr. Shook and
9 submit them as a stipulated document representing that
10 the public record has been searched here at the
11 Commission, and this is what has come in, as far as
12 comments are concerned by such and such a date.

13 And they'll be a date certain. I haven't
14 decided it yet, but there's going to come a period.
15 I mean, it's only going to be like for about 10 days
16 after the hearing record is closed.

17 And so, anything that comes in after the
18 date that I set when I close the record just won't be
19 considered. It's a question of timeliness, that's
20 all. Do you have any problem with that?

21 MS. REPP: No, I don't. Thanks.

22 ADMIN. JUDGE SIPPEL: Mr. Shook, is that
23 okay with you?

24 MR. SHOOK: That's fine.

25 MS. REPP: The other question I had is,

1 the District would like to amend the renewal
2 application. It has never formally been amended to
3 bring it up to date. And is that something we should
4 file with the Secretary's office, or should we file it
5 with the Court?

6 ADMIN. JUDGE SIPPEL: Oh no, whatever the
7 rules require for an amendment process, go through
8 that process. I'm not going to intervene with that,
9 unless there is a motion filed by the Bureau.

10 But, other than that, I'm not going to get
11 involved with it.

12 MS. REPP: If we wanted it to go into the
13 record of this proceeding, would we need to move?

14 ADMIN. JUDGE SIPPEL: Well, yes, you can
15 move it in if you want. I mean, I'm not sure if -
16 yes, you can certainly do that. Or you can stipulate
17 that it's coming in, certainly.

18 I mean, I don't exactly see where it would
19 be directly relevant to the issues. On the other
20 hand, if you want to put it in for purposes of showing
21 that the School District is conforming with the
22 regulations, with respect to this particular point in
23 time - something to show that you're conforming with
24 the rules - that's fine.

25 MS. REPP: Well, it will be relevant to

1 this proceeding, because one of the revisions that
2 will be provided in the amendment will be to revise
3 the response to the questions to whether the public
4 inspection file is complete.

5 ADMIN. JUDGE SIPPEL: Oh, I see. Then, by
6 all means, you're going to go on two tracks with that
7 then. You're going to use the traditional way of just
8 filing a routine amendment, and then you're going to
9 submit it by way of motion as an exhibit.

10 You can do it either on the record during
11 the hearing, or I'll leave the record open for a
12 reasonable period of time to do it afterwards by way
13 of motion.

14 MS. REPP: That helps, thank you.

15 ADMIN. JUDGE SIPPEL: Well, thank you.
16 Anything else? Are you finished, Ms. Repp?

17 MS. REPP: Yes, I am, Your Honor.

18 ADMIN. JUDGE SIPPEL: Mr. Shook?

19 MR. SHOOK: I took that silence to mean
20 you were finished.

21 ADMIN. JUDGE SIPPEL: Okay.

22 MR. SHOOK: First, sequestration of
23 witnesses. We would request that the witnesses be
24 sequestered.

25 ADMIN. JUDGE SIPPEL: What about - who's

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1 going to represent the client? Who's going to be -
2 the client, being the FSUSD, is entitled to have a
3 principal here in the court for the entire proceeding.

4 MR. SHOOK: From that standpoint, I would
5 think if the School District wanted to have one, they
6 have a variety of people from which to choose and we
7 could certainly discuss that matter if they wish to
8 have somebody present during the entire period.

9 MS. REPP: They do, indeed, wish to have
10 somebody present from the District. They are not a
11 witness in the proceeding, and they haven't provided
12 direct testimony.

13 MR. SHOOK: That would not be a problem,
14 then.

15 ADMIN. JUDGE SIPPEL: All right, do you
16 want to identify who the person might be?

17 MS. REPP: Yes, that will be Angela
18 Miller, who is an attorney with the legal office of
19 the District.

20 ADMIN. JUDGE SIPPEL: All right, subject
21 to then - she's an attorney. Now, let me get this
22 straight. Is she an attorney, is she an in-house
23 attorney for the District?

24 MS. REPP: Yes, Your Honor.

25 ADMIN. JUDGE SIPPEL: Then that would

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1 answer the question of SFUSD having a principal here.
2 Then I don't see any reason why the sequestration
3 ruling shouldn't be employed. Do you have any
4 objection to that?

5 MS. REPP: We do not have an objection.

6 ADMIN. JUDGE SIPPEL: We will have room
7 that's right down the corridor. Ms. Parker's in the
8 courtroom, the paralegal, she can show it to you at
9 the break if you want. But it's very obviously - is
10 that right, it's the next room down, just behind me?

11 Two behind me, actually, the first one is
12 my entrance. But the second door down in that
13 direction behind me will have a witness room. And so,
14 but again, based on the schedule that we talked about
15 this morning, you know exactly when people are going
16 to be coming in to testify.

17 And we already talked about that, so you
18 may not have much use of it. Anything else, Mr.
19 Shook? You had two things.

20 MR. SHOOK: Yes, Your Honor. The second
21 matter is, I think it would help our understanding, at
22 this stage - and I don't just mean the Bureau's
23 understanding, I mean everybody's understanding - as
24 to what criteria we should use to determine what
25 constitutes meritorious programming.

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1 I believe a number of us have our own gut
2 feelings as to what may be, or may not be, meritorious
3 programming. But the breadth of the exhibits that the
4 School District has provided in this proceeding
5 suggests that the notion of meritorious programming is
6 going beyond what I believe the Commission's
7 traditional understanding of that term to be, which is
8 focusing on non-entertainment programming that deals
9 with news or public affairs.

10 ADMIN. JUDGE SIPPEL: Ms. Repp, do you
11 want to respond to that before I get into it?

12 MS. REPP: Well, I note that the issue
13 added was called meritorious service, as opposed to
14 programming. And I believe that is consistent with
15 the precedent that looks at a variety of activities by
16 a radio station serving the public interest - serving
17 the needs and trusts and concerns of its community.

18 And while there may have been a focus, or
19 more of an emphasis, on public affairs programming,
20 that's clearly recognized as news and information.
21 That, nevertheless, the meritorious service criteria
22 includes anything that the station does that serves
23 the needs and interests of the community.

24 And, therefore, all of the items that
25 we've put in are relevant to that issue.

1 ADMIN. JUDGE SIPPEL: Okay. I would be -
2 do you want to reply to that, at all, Mr. Shook?

3 MR. SHOOK: Your Honor, there are a number
4 of programs that the School District is citing as
5 examples of meritorious programming. And I do not
6 doubt for a moment that there are segments of KALW's
7 listening audience that finds some of that programming
8 to be interesting, entertaining or both.

9 It's just that the traditional criteria,
10 as I understand it, that the Commission has used to
11 determine what constitutes meritorious programming is
12 generally not looked at entertainment programming, per
13 se, as something that constitutes would be viewed as
14 meritorious programming or meritorious service.

15 By way of amplifying my thoughts, I enjoy
16 listening to classic rock. Well, simply because I
17 listen to a classic rock station, and it happens to
18 play a variety of pieces of music that I find
19 enjoyable and others find enjoyable, doesn't
20 necessarily mean that providing classic rock to one's
21 audience constitutes meritorious service.

22 It would seem to me that the same kind of
23 reasoning should apply with respect to those programs
24 what could be viewed primarily or exclusively as music
25 programs. And, I believe some of the exhibits in here

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1 are concerned with programming that is music
2 programming.

3 And I'm sure, as I said, there are people
4 who enjoy it. But I just don't see that that makes it
5 the kind of programming that the Commission would
6 possibly give credit to for considering whether or not
7 whatever sanctions may ultimately be imposed here
8 should be offset in some fashion.

9 ADMIN. JUDGE SIPPEL: All right.

10 MS. REPP: Your Honor, if I may address
11 that further?

12 ADMIN. JUDGE SIPPEL: Yes, go ahead.

13 MS. REPP: KALW is not just running a
14 music programming, like a traditional commercial
15 station, where a record's spun and then the commercial
16 comes on and that's the end of it.

17 These music programs have speaking
18 segments. They explore cultures that are of interest
19 to people. And I would suggest that they go into the
20 record and, at the time of findings of fact and
21 conclusions of law, they're presented by the parties,
22 the Bureau can discuss why they think they are not
23 helping the meritorious service ruling, and we can
24 discuss why we think they are.

25 ADMIN. JUDGE SIPPEL: All right. Well,

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1 you both have excellent points. I'm inclined to let
2 it in for two reasons. My first reason is, is that
3 this is not a comparative renewal.

4 So, there's really not anybody that's
5 going to prejudice by this. I don't think the
6 Commission really cares too much about - they
7 certainly care a lot about the allegations of
8 misrepresentation was being properly filed, and this
9 type of thing.

10 But I don't see how the Commission is
11 prejudice by receiving some evidence that might be
12 what I would call a mixed bag. I mean, if Ms. Repp
13 can show that there's a combination of meeting a
14 community need or meeting a community issue that
15 happens to be in the context of a cultural
16 presentation that has music along with it, for the
17 purposes that I allow this to come in.

18 It's within the confines of why the issue
19 was set in the first instance. On the other hand,
20 it's going to go to weight. I guess that was my
21 second point, was that a lot of this is going to
22 depend upon the weight.

23 The greatest weight is going to be given
24 to whatever can be shown to be the class, or as you
25 say the traditional, type of meritorious programming.

1 This other mixed bag approach may get lesser weight.

2 And there may actually be some types of
3 this evidence where I'm convinced by the Bureau that
4 it doesn't deserve any weight because it doesn't even
5 come close to fitting into the category of meritorious
6 programming.

7 So that's how we'll do it. So, you can -
8 Mr. Shook, the Bureau will not be waiving anything if
9 this evidence comes in today and it's not specifically
10 objected to as being irrelevant because it's not
11 meritorious. You have a general objection on the
12 record.

13 MR. SHOOK: I do.

14 ADMIN. JUDGE SIPPEL: And that can be -
15 unless you have something specific that you do want to
16 raise or comment on or object to at this particular
17 point in time.

18 MR. SHOOK: No, Your Honor, I wanted to
19 make the objection generally. I think doing that
20 would get our concerns out in front of you and out in
21 front of the School District, and we needn't burden
22 the record further by us making a specific objection
23 to the particular offerings that the School District
24 will make.

25 I believe what I've said is sufficiently

1 clear in terms of the programming. We think it would
2 not fall within the rulebook of meritorious
3 programming or meritorious service, and I'll just
4 leave it at that.

5 ADMIN. JUDGE SIPPEL: All right, you have
6 file's finding and reply's finding, so there's
7 certainly more than - plus what can be represented in
8 the Court. There's more than ample opportunity to
9 flush this out, and I'm going to consider it very
10 carefully when I make my findings.

11 Okay. Let me be sure I'm clear on one of
12 the housekeeping things about this, this business
13 about the bottled water. By all means, the witnesses
14 are free to come up with their own bottled water, and
15 they can put it on the table in front of them.

16 I don't want the witnesses to be concerned
17 about something like that. And I can't vouch for the
18 city water, so if they want to come in with their
19 bottled water, they're welcome to do so.

20 But counsel should be a little bit
21 discreet in terms of how they handle it at counsel
22 table. Okay, are we set to go?

23 MS. REPP: We are.

24 ADMIN. JUDGE SIPPEL: All right, let's -
25 Ms. Repp, you have evidence to proffer at this time?

1 MS. REPP: Yes, Your Honor, I would like
2 to proffer evidence into the record of this proceeding
3 on behalf of San Francisco Unified School District.
4 The first item we would like to proffer and move the
5 Court to accept into the record is the Direct
6 Testimony of Jeffrey P. Ramirez. It is a 21-page
7 document, dated May 2nd, 2005.

8 ADMIN. JUDGE SIPPEL: And that is in your
9 spiral bound?

10 MS. REPP: Yes, Your Honor. We did not
11 identify as exhibits the direct testimony. It's just
12 identified by the label on the top, if that's
13 appropriate.

14 ADMIN. JUDGE SIPPEL: I can file that,
15 that's no problem.

16 MR. SHOOK: Your Honor, I would request,
17 just for purposes of clarity, that either this
18 testimony of Mr. Ramirez be tentatively identified as
19 SFUSD Exhibit No. 74, which I think is the number that
20 follows the last document that they have, or that
21 somehow it be identified in some fashion so that we
22 can all understand, in a relatively easy way, what it
23 pertains to.

24 Because, otherwise, we may be having two
25 SFUSD Exhibit No. 1s.

1 MS. REPP: Well, we could, Your Honor, if
2 we need to make it simpler, have Exhibit No. - one
3 suggestion would be Exhibit No. 1a, and that's Exhibit
4 No. 1b and No. 1c.

5 MR. SHOOK: However you want to do it in
6 order to just make sure everybody knows what they're
7 talking about.

8 ADMIN. JUDGE SIPPEL: Well, that's an
9 excellent point. You have set it up - I see what
10 you're talking about. Yes, there's a deposition in
11 the loose-leaf binder, is that right?

12 MR. SHOOK: Your Honor, a possible
13 suggestion... For the six individuals for whom direct
14 testimony is being proffered by the School District,
15 perhaps their exhibits for those documents can be
16 labeled No. 1t, 2t, etc, through 6t, to differentiate
17 them from the other SFUSD exhibits.

18 ADMIN. JUDGE SIPPEL: Testimony versus
19 exhibits?

20 MR. SHOOK: Yes.

21 ADMIN. JUDGE SIPPEL: How does that sound?

22 MS. REPP: That works for me, Your Honor.

23 ADMIN. JUDGE SIPPEL: All right, then the
24 reporter will mark this as - we'll use SFUSD?

25 MS. REPP: Yes, Your Honor.

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1 ADMIN. JUDGE SIPPEL: SFUSD Exhibit No. 1,
2 for identification. Or is that No. 1t?

3 MS. REPP: SFUSD Exhibit No. 1t.

4 ADMIN. JUDGE SIPPEL: All right, we're
5 into No. 1t.

6 (Whereupon, the above-referred
7 to document was marked into
8 evidence as SFUSD Exhibit No.
9 1t, for identification.)

10 MR. SHOOK: We have no objection.

11 ADMIN. JUDGE SIPPEL: SFUSD Exhibit No. 1t
12 has been identified and there is no objection. So,
13 SFUSD Exhibit No. 1t, which is the Prepared Direct
14 Testimony of Jeffrey Ramirez, is received into
15 evidence. The next exhibit?

16 (Whereupon, the document
17 previously marked as SFUSD
18 Exhibit No. 1t was received
19 into evidence.)

20 MS. REPP: Your Honor, SFUSD moves into
21 the record of this proceeding, Direct Testimony of
22 William C. Helgeson. It is an 18-page document,
23 executed on April 29th, 2005.

24 ADMIN. JUDGE SIPPEL: Okay, hold on just
25 a second.

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1 MS. REPP: And we request that that
2 document be identified as SFUSD Exhibit No. 2t.

3 ADMIN. JUDGE SIPPEL: All right, the
4 reporter will so identify that document as SFUSD
5 Exhibit No. 2t. And we'll move it into evidence if
6 there's no objection.

7 (Whereupon, the above-referred
8 to document was marked into
9 evidence as SFUSD Exhibit No.
10 2t, for identification.)

11 MR. SHOOK: No objection.

12 ADMIN. JUDGE SIPPEL: It's received into
13 evidence as SFUSD Exhibit No. 2t.

14 (Whereupon, the document
15 previously marked as SFUSD
16 Exhibit No. 2t was received
17 into evidence.)

18 MS. REPP: Your Honor, SFUSD moves into
19 evidence in the record of this proceeding the Direct
20 Testimony of Margaret Ann "Sawaya", a document
21 executed on April 29, 2005. It's 26 pages. And we
22 request that it be identified as SFUSD Exhibit No. 3t.

23 ADMIN. JUDGE SIPPEL: Any objection?

24 MS. LEAVITT: Yes, Your Honor. The Bureau
25 objects to three sentences on Page 2 of this

1 testimony, and asks that it be stricken. The basis
2 for this request is that the information contained in
3 Line 8, at the very end of the line, the start of the
4 second sentence in that Line 8 and concluding at Line
5 11, is completely irrelevant to the issues that have
6 been designated.

7 Similarly, we would ask that the second
8 sentence starting in Line 12 and concluding in Line 13
9 be stricken as similarly irrelevant.

10 ADMIN. JUDGE SIPPEL: Okay, Ms. Repp,
11 please?

12 MS. REPP: Your Honor, the request for the
13 language to be stricken goes to the background of Ms.
14 Sawaya. Her character is at issue in this proceeding.
15 And we believe it gives a full picture of where she
16 came from and how she is dedicating herself to the
17 American cultural process.

18 ADMIN. JUDGE SIPPEL: Well, aside from the
19 relevance objection, does the Bureau feel that it's
20 prejudiced by this evidence in some way?

21 MS. LEAVITT: Your Honor, we believe that
22 it's evidence that really could go off into a side
23 issue that, again, is not directly relevant to the
24 issues that have been designated in this hearing.

25 And if the District is proposing that,

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1 because of her background, there's some different
2 standard for candor or representation, we would ask
3 that they make some proffer of that.

4 ADMIN. JUDGE SIPPEL: Well, I think that,
5 unless you want to amplify your proffer, I think you
6 already made your proffer on this.

7 MS. REPP: That's right. This is
8 background on Ms. Sawaya.

9 ADMIN. JUDGE SIPPEL: Well, I do agree
10 with your counsel. I just - it's a technical
11 objection. I don't know how much prejudice there'd be
12 by leaving it in, but it certainly is irrelevant to
13 what we are considering here.

14 And since meritorious service and all
15 other types of things are being considered, I will
16 grant the motion and exclude the lines on Page 2 of
17 Exhibit No. 3t that you have identified.

18 (Whereupon, the above-referred
19 to document was marked into
20 evidence as SFUSD Exhibit No.
21 3t, for identification.)

22 MS. REPP: Your Honor, may I ask if you
23 want us to mark that in the Exhibit that we're
24 proffering, or will we leave that to the Court
25 Reporter?

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1 ADMIN. JUDGE SIPPEL: My suggestion would
2 be is that you be sure that the Court Reporter has it
3 the right way. Whatever you're giving to the Court
4 Reporter indicates that.

5 MR. SHOOK: Your Honor, in the past, the
6 way we've done this is to simply draw a line through
7 the stricken testimony.

8 ADMIN. JUDGE SIPPEL: Right.

9 MR. SHOOK: And that way, anybody can see
10 what was there in the first place.

11 ADMIN. JUDGE SIPPEL: Exactly. I'm sorry,
12 I didn't understand. Yes, that's -

13 MR. SHOOK: I believe that's what -

14 ADMIN. JUDGE SIPPEL: Is that what you
15 meant, Ms. Repp?

16 MS. REPP: Yes.

17 ADMIN. JUDGE SIPPEL: Yes, obviously we
18 want to leave in there what's been proffered, and just
19 drawing a line through it will indicate the ruling
20 plus what's on the record. Now, is there any other
21 objection to that exhibit?

22 MS. LEAVITT: No, Your Honor.

23 ADMIN. JUDGE SIPPEL: All right, then
24 subject to that ruling on the striking, exhibit SFUSD
25 Exhibit No. 3t is received into evidence.

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1 (Whereupon, the document
2 previously marked as SFUSD
3 Exhibit No. 3t was received
4 into evidence.)

5 And that is the Testimony of Ms. Sawaya,
6 S-A-W-A-Y-A. And the next exhibit will be...?

7 MS. REPP: Exhibit No. 4t, SFUSD moves for
8 the admission, into the record of this proceeding, the
9 Direct Testimony of Arlene Ackerman, a 5-page document
10 executed on May 2, 2005.

11 ADMIN. JUDGE SIPPEL: Any objections?

12 MR. SHOOK: No, Your Honor.

13 ADMIN. JUDGE SIPPEL: Exhibit SFUSD
14 Exhibit No. 4t, for identification, is identified as
15 SFUSD Exhibit No. 4t and is received into evidence as
16 Exhibit No. 4t.

17 (Whereupon, the above-referred
18 to document was marked into
19 evidence as SFUSD Exhibit No.
20 4t, for identification.)

21 (Whereupon, the document
22 previously marked as SFUSD
23 Exhibit No. 4t was received
24 into evidence.)

25 MS. REPP: Your Honor, as Exhibit No. 5t,

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1 the District moves, for entry into this record, the
2 Direct Testimony of Alan Farley, a 5-page document
3 executed on April 29, 2005.

4 ADMIN. JUDGE SIPPEL: All right, any
5 objections to this document?

6 MR. SHOOK: No objection, Your Honor.

7 ADMIN. JUDGE SIPPEL: Exhibit SFUSD
8 Exhibit No. 5t will be so marked as SFUSD Exhibit No.
9 5t, and it is received into evidence.

10 (Whereupon, the above-referred
11 to document was marked into
12 evidence as SFUSD Exhibit No.
13 5t, for identification.)

14 (Whereupon, the document
15 previously marked as SFUSD
16 Exhibit No. 5t was received
17 into evidence.)

18 MS. REPP: As SFUSD Exhibit No. 6t, SFUSD
19 moves, into the record of this proceeding, the Direct
20 Testimony of Lorna Ho, a 31-page document executed on
21 May 2, 2005.

22 ADMIN. JUDGE SIPPEL: That document is
23 identified as SFUSD Exhibit No. 6t.

24 (Whereupon, the above-referred
25 to document was marked into

evidence as SFUSD Exhibit No.

6t, for identification.)

Is there any objection to its receipt?

MR. SHOOK: Your Honor, I do, with respect to Pages 2, beginning at Line 14 to Page 5, concluding at Line 15. The proffered witness is testifying about supposed programming that is responsive to community interests, needs and concerns broadcasts during the renewal period, which is November 3, 1996 and November 3, 1997.

I would note that the witness in question apparently did not begin her employment at SFUSD until November 19, 2002. I also recognize that, with respect to all or virtually all of these programs, that there is testimony being proffered by other witnesses and that I can tell you now, and I can tell SFUSD now, that the Bureau will not be objecting to those witness' statements, relative to these programs.

The Bureau does have a problem, though, with Ms. Ho being the proponent of testimony relative to a period of time when she wasn't at the station or the School District.

ADMIN. JUDGE SIPPEL: She is in - what is her capacity? She is, in effect, a public affairs type of job?

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1 MS. REPP: Your Honor, she is a member of
2 the Superintendent's staff.

3 ADMIN. JUDGE SIPPEL: Right.

4 MS. REPP: And she is the liaison between
5 the Superintendent in the School District. While she
6 was not at the District at the time of the earlier
7 renewal period, the information, as she states on Page
8 1, Lines 13 and 14, that's provided here is based on
9 her personal knowledge, or information provided to me
10 by individuals with personal knowledge.

11 The station maintains records of the
12 programming that it had during the subject time
13 period, and the information in here is based on those
14 records, which were provided to Ms. Ho.

15 ADMIN. JUDGE SIPPEL: Well, it seems like
16 she's just sponsoring this evidence, which would be
17 readily available at the station. Do you think that
18 she's not competent to testify to this? I don't
19 understand.

20 MR. SHOOK: Your Honor, I don't understand
21 how it is that she can be competent to talk about
22 something that is responsive to community interests
23 and needs when she wasn't even there.

24 MS. REPP: Ms. Ho is not drawing a legal
25 conclusion, she's stating the facts that these

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1 programs existed and what the programs were about.

2 MR. SHOOK: If it's limited to that, I
3 don't object.

4 ADMIN. JUDGE SIPPEL: All right, with that
5 limitation that she is simply a courier of that
6 information to the record, bringing that information
7 into the record as an agent of SFUSD, qualified
8 certainly to do that.

9 But her position, by virtue of the fact of
10 her time with the station and her obvious inability to
11 have personal knowledge of these things, her testimony
12 does not add anything to these evidentiary facts.
13 Does that meet your concern?

14 MR. SHOOK: Yes, Sir.

15 ADMIN. JUDGE SIPPEL: All right.

16 MR. SHOOK: For example, if we look at
17 Page 2, the first locally produced program that is
18 discussed is the AIDS Update Program, and the producer
19 is Alan Farley. Well, we just had a declaration from
20 Mr. Farley, and I believe there's at least one other
21 exhibit in SFUSD's proffer that is going to address
22 AIDS Update.

23 And I certainly don't object to Mr. Farley
24 testifying about a program that he produced.

25 ADMIN. JUDGE SIPPEL: But Mr. Farley is

1 not going to be here in Court though.

2 MR. SHOOK: No, he's not. But, I mean,
3 his direct testimony has been received already.

4 ADMIN. JUDGE SIPPEL: I see.

5 MR. SHOOK: And there will be another
6 exhibit that deals with, or mentions at least, AIDS
7 Update. And I can tell you now, I'm not going to be
8 objecting to that.

9 ADMIN. JUDGE SIPPEL: All right, let me be
10 sure I have the universe of this. Well, that's my
11 ruling, is that I'm going to - I'm sustaining the
12 objection, in part, but I am receiving the evidence,
13 nonetheless.

14 It's not to be stricken, with my
15 qualifications. And this is, again, we're talking
16 about SFUSD Exhibit No. 6t, which is the testimony of
17 Lorna Ho, and it begins at Page 2, Line 14 and it goes
18 to Page 5, Line 15, is that right?

19 MR. SHOOK: Yes, Sir.

20 ADMIN. JUDGE SIPPEL: All right.

21 (Whereupon, the document
22 previously marked as SFUSD
23 Exhibit No. 6t was received
24 into evidence.)

25 Okay, and your next exhibit? Was that it

1 for the testimony?

2 MS. REPP: Yes, Your Honor.

3 ADMIN. JUDGE SIPPEL: Now we're into the
4 big binder?

5 MS. REPP: Yes, the big binder. SFUSD
6 moves into evidence, into the record of this
7 proceeding, SFUSD Exhibit No. 1. It is the Deposition
8 Transcript of Jeffrey Ramirez, of his deposition taken
9 in this proceeding on November 9, 2004, and it's 142
10 pages.

11 ADMIN. JUDGE SIPPEL: Okay, that's so
12 marked for identification as SFUSD Exhibit No. 1.

13 (Whereupon, the above-referred
14 to document was marked into
15 evidence as SFUSD Exhibit No.
16 1, for identification.)

17 Is there any objection?

18 MR. SHOOK: None.

19 ADMIN. JUDGE SIPPEL: It's received into
20 evidence as SFUSD Exhibit No. 1

21 (Whereupon, the document
22 previously marked as SFUSD
23 Exhibit No. 1 was received into
24 evidence.)

25 MS. REPP: SFUSD moves into evidence SFUSD

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1 Exhibit No. 2, Annual Financial Report, Station Fiscal
2 Period Ending June 30, 1997, which consists of 15
3 pages.

4 ADMIN. JUDGE SIPPEL: Any objection?

5 MR. SHOOK: None.

6 ADMIN. JUDGE SIPPEL: Marked and received.

7 (Whereupon, the above-referred
8 to document was marked into
9 evidence as SFUSD Exhibit No.
10 2, for identification.)

11 (Whereupon, the document
12 previously marked as SFUSD
13 Exhibit No. 2 was received into
14 evidence.)

15 ADMIN. JUDGE SIPPEL: Next exhibit?

16 MS. REPP: SFUSD moves into this
17 proceeding, SFUSD Exhibit No. 3, KALW Program Guides
18 from November 1996 to November 1997. This document
19 has been stipulated, and it consists of 120 pages.

20 ADMIN. JUDGE SIPPEL: Marked and, since
21 it's stipulated too, is that correct, then it's
22 received.

23 MR. SHOOK: Yes, Sir, it is.

24 ADMIN. JUDGE SIPPEL: Okay, that's SFUSD
25 Exhibit No. 3. It's marked and in.

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1 (Whereupon, the above-referred
2 to document was marked into
3 evidence as SFUSD Exhibit No.
4 3, for identification.)

5 (Whereupon, the document
6 previously marked as SFUSD
7 Exhibit No. 3 was received into
8 evidence.)

9 ADMIN. JUDGE SIPPEL: Your next one?

10 MS. REPP: SFUSD moves, into the record of
11 this proceeding, SFUSD proposed Exhibit No. 4. It is
12 also a stipulated document. It is the Opposition to
13 Petition to Deny, dated January 20, 1998 and consists
14 of 86 pages.

15 ADMIN. JUDGE SIPPEL: And that's in by
16 stipulation? I have a notation to that effect, I'm
17 sorry. I'm getting ahead of you, Mr. Shook.

18 MR. SHOOK: Your Honor, in the Bureau's
19 exhibits, we included a portion of the opposition
20 pleading. Our idea was to try to limit the amount of
21 paper in this proceeding. But, upon reflection, it
22 really doesn't matter that much whether we have the
23 entire opposition or whether we have only selected
24 portions of it.

25 So, whatever objections I may have had, I

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1 am not going to voice them.

2 ADMIN. JUDGE SIPPEL: Okay, I want to note
3 your intentions were exceedingly meritorious, and I
4 appreciate that. But we will received as proffered,
5 marked and received, SFUSD Exhibit No. 4 is now in.

6 (Whereupon, the above-referred
7 to document was marked into
8 evidence as SFUSD Exhibit No.
9 4, for identification.)

10 (Whereupon, the document
11 previously marked as SFUSD
12 Exhibit No. 4 was received into
13 evidence.)

14 ADMIN. JUDGE SIPPEL: Your next one?

15 MS. REPP: SFUSD moves, into the record of
16 this proceeding, proposed Exhibit No. 5, a 1997
17 Renewal Application Package, consisting of 16 pages,
18 which is also the subject of the May 3, 2005
19 stipulations.

20 ADMIN. JUDGE SIPPEL: Any objection?

21 MR. SHOOK: None.

22 ADMIN. JUDGE SIPPEL: Then SFUSD Exhibit
23 No. 5 is marked and received.

24 (Whereupon, the above-referred
25 to document was marked into

1 evidence as SFUSD Exhibit No.
2 5, for identification.)
3 (Whereupon, the document
4 previously marked as SFUSD
5 Exhibit No. 5 was received into
6 evidence.)

7 Your next exhibit?

8 MS. REPP: SFUSD moves, into the record of
9 this proceeding, proposed Exhibit No. 6. It is an
10 October 4, 1997 Memo to Ernest Sanchez from Jeff
11 Ramirez. It is 8 pages long.

12 ADMIN. JUDGE SIPPEL: Any objection?

13 MR. SHOOK: None.

14 ADMIN. JUDGE SIPPEL: Marked and received,
15 SFUSD Exhibit No. 6.

16 (Whereupon, the above-referred
17 to document was marked into
18 evidence as SFUSD Exhibit No.
19 6, for identification.)

20 (Whereupon, the document
21 previously marked as SFUSD
22 Exhibit No. 6 was received into
23 evidence.)

24 Your next exhibit?

25 MS. REPP: SFUSD moves, into the record of

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1 this proceeding, proposed Exhibit No. 7, consisting of
2 the 1993 and 1995 Ownership Reports. It is a 6-page
3 document.

4 ADMIN. JUDGE SIPPEL: Any objection?

5 MR. SHOOK: None.

6 ADMIN. JUDGE SIPPEL: Marked and received.

7 (Whereupon, the above-referred
8 to document was marked into
9 evidence as SFUSD Exhibit No.
10 7, for identification.)

11 (Whereupon, the document
12 previously marked as SFUSD
13 Exhibit No. 7 was received into
14 evidence.)

15 Next exhibit?

16 MS. REPP: SFUSD moves, into the record of
17 this proceeding, proposed Exhibit No. 8. It is a Memo
18 from Jeffrey Ramirez to Enrique Pancios, dated January
19 30, 1998. It consists of 3 pages.

20 ADMIN. JUDGE SIPPEL: Objections?

21 MR. SHOOK: None.

22 ADMIN. JUDGE SIPPEL: Marked and received
23 SFUSD Exhibit No. 8.

24 (Whereupon, the above-referred
25 to document was marked into

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1 evidence as SFUSD Exhibit No.
2 8, for identification.)
3 (Whereupon, the document
4 previously marked as SFUSD
5 Exhibit No. 8 was received into
6 evidence.)

7 Your next exhibit?

8 MS. REPP: SFUSD moves, into the record of
9 this proceeding, proposed Exhibit No. 9. It is an
10 April 3, 2001 E-Mail from William Helgeson to Ernest
11 Sanchez, and it consists of 1 page.

12 ADMIN. JUDGE SIPPEL: Any objection?

13 MR. SHOOK: None.

14 ADMIN. JUDGE SIPPEL: Marked and received.

15 (Whereupon, the above-referred
16 to document was marked into
17 evidence as SFUSD Exhibit No.
18 9, for identification.)

19 (Whereupon, the document
20 previously marked as SFUSD
21 Exhibit No. 9 was received into
22 evidence.)

23 Your next exhibit, please...

24 MS. REPP: SFUSD moves, into the record of
25 this proceeding, proposed Exhibit No. 10. This is

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1 also subject to stipulation. It is an April 5, 2001
2 E-Mail from William Helgeson to Susan Jenkins, and it
3 consists of 1 page.

4 ADMIN. JUDGE SIPPEL: Any objection?

5 MR. SHOOK: None.

6 ADMIN. JUDGE SIPPEL: SFUSD Exhibit No. 10
7 is marked and received.

8 (Whereupon, the above-referred
9 to document was marked into
10 evidence as SFUSD Exhibit No.
11 10, for identification.)

12 (Whereupon, the document
13 previously marked as SFUSD
14 Exhibit No. 10 was received
15 into evidence.)

16 MS. REPP: SFUSD moves, into the record in
17 this proceeding, Exhibit No. 11. It is an April 5,
18 2001 Fax Cover Sheet from Bill Helgeson to Ernest
19 Sanchez. It consists of 1 page and is subject to
20 stipulation.

21 ADMIN. JUDGE SIPPEL: Any objection?

22 MR. SHOOK: None.

23 ADMIN. JUDGE SIPPEL: Okay, SFUSD Exhibit
24 No. 11 is marked and received.

25 (Whereupon, the above-referred